

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 TONY LEE SMITH,

4 Petitioner,

5 vs.

6 CLARK COUNTY SHERIFF,

7 Respondent.

2:13-cv-00135-GMN-GWF

ORDER

9 The petitioner, proceeding in proper person without counsel, presented the Court with a petition  
10 for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The action was screened by the Court as  
11 required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. It  
12 was then dismissed because petitioner had not been convicted and the Court lacked subject matter  
13 jurisdiction under the statute. Petitioner now moves the court for a certificate of appealability (ECF Nos.  
14 7 and 8).

15 Generally, a petitioner must make “a substantial showing of the denial of a constitutional right”  
16 to warrant a certificate of appealability. *Id.* The Supreme Court has held that a petitioner “must  
17 demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims  
18 debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

19 The Supreme Court further illuminated the standard for issuance of a certificate of appealability  
20 in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Court stated in that case:

21 We do not require petitioner to prove, before the issuance of a COA, that  
22 some jurists would grant the petition for habeas corpus. Indeed, a claim  
23 can be debatable even though every jurist of reason might agree, after the  
24 COA has been granted and the case has received full consideration, that  
25 petitioner will not prevail. As we stated in *Slack*, “[w]here a district court  
has rejected the constitutional claims on the merits, the showing required  
to satisfy § 2253(c) is straightforward: The petitioner must demonstrate  
that reasonable jurists would find the district court’s assessment of the  
constitutional claims debatable or wrong.”

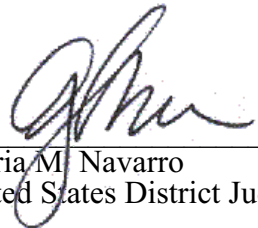
26 *Id.* at 1040 (quoting *Slack*, 529 U.S. at 484).

1 The Court has considered the issues raised by petitioner, with respect to whether they satisfy the  
2 standard for issuance of a certificate of appeal, and the Court determines that none meet that standard.  
3 Accordingly, the Court will deny petitioner a certificate of appealability.

4 **IT IS THEREFORE ORDERED** that petitioner's motions for **A CERTIFICATE OF**  
5 **APPEALABILITY** (ECF Nos. 7 and 8) are **denied**.

6 **IT IS FURTHER ORDERED** that all other pending motions are denied as moot.

7 **DATED** this 2nd day of April, 2013.

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12 Gloria M. Navarro  
13 United States District Judge  
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